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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554**

MAR 13 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Bell Operating Company)

Provision of Out-of-Region)

Interstate, Interexchange Services)

CC Docket No. 96-21

DOCKET FILE COPY ORIGINAL

**COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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SUMMARY

In this proceeding, the Commission seeks to define the conditions under which the Bell Operating Companies ("BOCs") may be classified as nondominant carriers for out-of-region interLATA services authorized by the Telecommunications Act of 1996. CompTel agrees that the BOCs should be classified as nondominant carriers for out-of-region services if they do not have market power, but the Commission cannot reach that conclusion under the conditions proposed in the NPRM.

It is indisputable that the BOCs have market power within their local exchange regions. CompTel is concerned that the BOCs may discriminate against their out-of-region rivals in the provision of local exchange service or use their local exchange market power to gain an unfair advantage (and thus market power) in out-of-region interLATA services. For example, to the extent a BOC shares transmission facilities, billing and collection, customer service, or operator assistance personnel, equipment and facilities with its local exchange operations, the potential for cross-subsidization of interLATA services exists. In addition, the BOCs could use their unique access to subscriber-specific data derived as a local exchange service provider (such as validation or call routing databases, customer calling patterns or credit histories) to (in the examples) subsidize its costs, target high volume customers or avoid credit risks and fraudulent toll calling. Favoritism in this manner would enable the BOCs to acquire market power at the expense of non-affiliated interLATA providers, particularly the hundreds of smaller providers now competing vigorously in the market. Although the *Notice* implicitly recognizes some of these concerns, its proposed conditions for nondominant treatment offer inadequate protection against the potential exercise of BOC market power.

This is not to say that the BOCs must be excluded from the market or must always be regulated as dominant carriers. Rather, the BOCs can and should be subject to the rules for nondominant carriers *if* they lack market power. This can be the case only if the following five conditions apply to the BOC's out-of-region interLATA services:

1. ***BOC Out-of-Region Services Are Physically and Administratively Separate.*** The affiliate not only must maintain separate books of account (as the Commission proposes), but it should in every way be a separate enterprise. Thus, it should have separate directors, officers and employees, separate switching equipment (including all necessary call routing databases) and separate transmission facilities. Further, the affiliate must obtain financing and credit as if it were an independent entity, and may not rely on the BOC to guarantee its debts.
2. ***Local and Out-of-Region Services Are Not Jointly Marketed.*** This principle has two components. First, the BOC should not in any way market out-of-region services to in-region customers. For example, the BOC may not offer discounts for using a BOC card, or may not market the affiliate's services to customers moving out of the BOC's region. Second, as with all other unaffiliated carriers, the BOC affiliate should not market local services out of its region in conjunction with interLATA services until Section 271(e)(1) is satisfied.
3. ***Title II Services Are Obtained from the BOC via Tariff.*** The affiliate should obtain terminating access and all other Title II services (including database queries, calling card validation information, and BNA) from the BOC's generally applicable tariffs on the same terms and conditions applicable to all other carriers.
4. ***Non-Title II Services Are Provided by the BOC on Non-Discriminatory Terms and Conditions.*** A BOC should not be permitted to discriminate in favor of its affiliate in billing and collection services or access to information obtained as a result of the BOC's provision of local exchange services.
5. ***Transactions Between the BOC and its Affiliate Are Recorded in Accordance with the Commission's Accounting Rules.*** The BOC should treat its affiliate as "nonregulated" for purposes of the cost accounting rules. In addition, to ensure such accounting rules are observed, the BOC should be required to obtain an annual independent audit of its affiliate's cost accounting practices.

In all instances where a BOC offers interLATA services under different conditions, it possesses market power, and therefore the Commission should apply dominant carrier rules. In practice, this principally requires initial Section 214 authorization and longer advance notice prior to tariff changes becoming effective. Such regulation would not unreasonably burden BOC out-of-region services.

The Commission should begin cautiously in the new era brought on by the 1996 Telecommunications Act. The Commission has not had experience with BOC provision of interLATA services, and the ways in which a BOC might exercise market power cannot be conclusively determined. Moreover, the Commission has indicated its intention to initiate in the near future a proceeding addressing the interexchange market as a whole. If practice proves that the BOCs lack market power in more instances than are described above, the Commission could adjust its regulatory scheme in the "Interexchange Regulation" proceeding. Until such a record is developed, however, the Commission should not apply nondominant carrier rules except where it can be certain that the BOCs will lack market power.

The Commission also should take several other actions in this proceeding. First, the Commission should regulate a BOC affiliate as dominant for out-of-region services provided in territories served by another LEC (including other BOCs) if the BOC has a joint venture, joint marketing arrangement, partnership, or other cooperative venture with the LEC, or where the BOC has a direct equity interest in the LEC not rising to the level of affiliation under the 1996 Act. In either of these situations, the "out-of-region" LEC may have an incentive, whether direct or indirect, to favor the BOC affiliate. As a result, the BOC interLATA affiliate may possess market power in these territories, and the Commission

will need the full panoply of dominant carrier regulations to protect against exercise of such market power.

Second, it should clarify that collect calls, third-party billed calls, and calls charged to BOC calling cards or debit cards, when such calls terminate in the BOC's local exchange regions, are "in-region" services under the 1996 Telecommunications Act.

Accordingly, the BOCs (and their out-of-region affiliates) should be prohibited from providing such services until they satisfy the requirements of Section 271(c) of the Act.

Finally, the Commission should regulate "incidental" services provided pursuant to Section 271(b)(3) of the Act in the same way it regulates other out-of-region services. Accordingly, these services also should be classified as nondominant services only when the BOCs lack market power.

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COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following comments on the Notice of Proposed Rulemaking ("*Notice*") in this docket.¹ For the reasons stated below, CompTel supports the Commission's proposal to classify as nondominant Bell Operating Company ("BOC") out-of-region interexchange services *if* certain conditions are met.²

CompTel is the principal industry association of competitive telecommunications providers. Its approximately 175 members offer a variety of telecommunications services, including interLATA communications, and they are critically dependent upon access to and use of the local exchange networks of the BOCs to provide these services. Accordingly, CompTel members are concerned that the BOCs may exercise market power to gain an unfair advantage upon entering the interLATA market.

¹ FCC 96-59 (released Feb. 14, 1996); *see* 61 Fed. Reg. 6607 (Feb. 21, 1996).

² The BOCs currently are regulated as dominant carriers. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, ("*Competitive Carrier*"), Fourth Report and Order, 95 F.C.C.2d 554, 557 n.6 (1983); *Competitive Carrier*, Fifth Report and Order, 98 F.C.C.2d 1191, 1198 n.23 (1984).

CompTel believes the BOCs' out-of-region interLATA services should be subject to nondominant carrier regulation, *provided* the BOCs cannot unfairly benefit from their dominant market position in local services. If the Commission adopts preconditions that ensure the BOCs' out-of-region interLATA services do not receive unfair competitive advantages, then the BOCs, like other unaffiliated IXC, will lack market power in interstate, interexchange services provided outside their local service regions. At the same time, however, the Commission should treat a BOC as dominant in regions where it has a cooperative arrangement with the incumbent LEC serving the area, and should clarify the definition of out-of-region services. The Commission also should apply its rules to interLATA services classified as "incidental" services under Section 271(b)(3) of the Act.

I. THE BOCs POSSESS MARKET POWER IN LOCAL EXCHANGE SERVICES AND COULD USE THAT POWER TO GAIN MARKET POWER IN INTEREXCHANGE SERVICES

In the *Competitive Carrier* proceeding, the Commission defined a dominant carrier as "a carrier that possesses market power."³ The Commission explained:

Market power refers to the control a firm can exercise in setting the price of its output. A firm with market power is able to engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest. This may entail setting price above competitive costs in order to earn supranormal profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors.⁴

³ *Competitive Carrier*, First Report and Order, 85 F.C.C.2d 1, 21 (1980) ("*First Report and Order*").

⁴ *Id.* (footnote omitted).

One of the key determinants of market power is whether a firm controls a bottleneck facility essential to competitors in a market. Such control is "prima facie evidence of market power requiring detailed regulatory scrutiny."⁵

It is indisputable that the BOCs control local exchange bottlenecks which confer market power in local exchange services.⁶ This market power could be exercised against out-of-region rivals dependent upon the BOC's exchange access services. This market power, moreover, may be transferred from the local market to the interexchange market. As recognized in the *Notice*, the Commission must be cognizant of the potential that a BOC will gain an "unfair advantage [in interLATA services] . . . because of its ownership and control of local exchange facilities."⁷ By leveraging its local exchange market power, a BOC may set its interLATA price below costs, thereby forestalling competitive responses by other interexchange carriers.

A. The BOCs Can Exercise Their Local Market Power to Punish or Favor Out-of-Region Rivals and Customers

Both interexchange providers and potential out-of-region customers are subject to the BOCs' market power in local services. The BOCs could exercise that market power to harm its out-of-region competitors and also as a reward or punishment for potential customers with locations both within and outside of the BOC's region.

⁵ *Id.*

⁶ The BOCs' market power was a fundamental premise of the MFJ's interLATA services restriction, and underlies the unbundling provisions of Telecommunications Act of 1996 as well. See *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982); Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ *Notice*, ¶ 7.

The market for interexchange services is inherently a nationwide market (and, increasingly, a global one).⁸ As a result, the same companies that the BOCs will compete against outside their regions are access customers of the BOCs inside their regions. The potential for abuse of the latter relationship is great. As Judge Greene recognized, "[a] Regional Company that competes against [interexchange] providers everywhere except in its own region would not find it difficult to discriminate against such a provider in its region, thereby damaging the competitor's service and reputation on a national basis."⁹

Additionally, because the interexchange market is national, customers located within a BOC's own region are likely targets of BOC marketing efforts for out-of-region services. The BOC could use its local exchange services as a reward and/or punishment to pressure these customers to select the BOC for out-of-region services. Initially, although the BOCs are barred (for the time being) from providing in-region interLATA services, there is nothing to stop business customers from short-hauling traffic originating in-region to a location outside the BOC region, where it could then be handed off to the BOC as "out-of-region" traffic. Indeed, the BOC could encourage such activities through favorable pricing of in-region services or through volume discounts on out-of-region services.

A more common scenario likely would involve business subscribers who also maintain offices outside the BOC's territory. These customers could be subjected to a variety of pressures, subtle and overt, to choose the BOC for their out-of-region needs. The

⁸ *Competitive Carrier*, Fourth Report and Order, 95 F.C.C.2d at 564 ("all domestic, interexchange telecommunications services comprise a single relevant product market with no relevant submarkets"); see also *United States v. Western Elec. Co.*, 673 F. Supp. 525, 543 (D.D.C. 1987) (it is a "plain and universally recognized fact" that the "market for interexchange service is national"), *rev'd on other grounds*, 900 F.2d 283 (D.C. Cir. 1990).

⁹ *United States v. Western Elec. Co.*, 1989-1 Trade Cas. (CCH) ¶ 68,619 (D.D.C. June 13, 1989).

BOC could reward their out-of-region customers with preferential treatment in the provisioning of local services or the roll-out of new technologies. Conversely, customers who select a non-BOC out-of-region provider would be hard pressed to do so without at least considering the likelihood (whether real or perceived) of retaliation through less responsive maintenance or customer service, or through poor quality connections.

B. The BOCs Could Leverage Their Local Market Power to Gain an Advantage in the Provision of Out-of-Region Services

The BOCs may leverage their local market power in at least four ways: (1) through the sharing of equipment or facilities, (2) through joint marketing, (3) through discriminatory access to competitively-valuable local service information, and (4) through discriminatory pricing of exchange services essential for the termination of traffic.

First, the BOC might be able to price interLATA services below a competitive price because it has access to equipment and personnel used to provide local exchange services. Many non-transmission related costs are common to both local and interLATA services, such as billing and collection, customer support, and operator handling capabilities. If the BOC employed the same personnel and facilities to provide these functions, it could shift interLATA costs to the local ratebase. Similarly, the BOCs might subsidize transmission costs by routing out-of-region calls through their local exchange regions to take advantage of transmission capacity used for local exchange, intraLATA, and "official services" within the BOC region.¹⁰ In either case, the BOC subsidizes its interLATA

¹⁰ See *United States v. Western Elec. Co.*, 569 F. Supp. 1057, 1097-1101 (D.D.C. 1983) ("official services" exception allows BOCs to construct and maintain interLATA facilities for "communications between personnel or equipment of an Operating Company and communications between Operating Companies and their customers"). Since the Act permits
(continued...)

services with personnel, equipment, or facilities that are funded by its monopoly operations, and avoids costs that must be incurred by other interLATA providers.

Second, the BOC could price its interLATA services below a competitive price by exploiting the local exchange for marketing purposes. For example, it could market out-of-region interLATA services to customers who notify the BOC that they are moving from the BOC region, or who maintain second homes located outside the BOCs' territories. Further, the BOC could market out-of-region operator services at a discount to its in-region customers through LEC calling card promotions.

Another way the BOCs can translate their local market power to the interLATA market is by exploiting information obtained in their capacity as local service providers. The BOC might give its interLATA service personnel preferential access to call routing databases, or customer account information. It also may discriminate in favor of its out-of-region operation in access to validation databases or billing name and address ("BNA") information. Or, it might use calling patterns or customer credit information to enable its interLATA operations to target profitable interLATA customers and avoid credit risks. Finally, the BOCs can manipulate the price or other terms and conditions of interconnection essential for the termination of traffic.

The *Notice* pays insufficient attention to these aspects of the BOCs' market power. Instead, it reaches a tentative conclusion based on previous determinations involving two dissimilar market participants: AT&T and the independent LECs.¹¹ The AT&T

¹⁰(...continued)

termination in-region, the potential for this type of cost-shifting is even greater. See 47 U.S.C. §§ 271(b)(1), 271(j) (defining in-region to include only originating calls, except in circumstances described in Section 271(j)).

¹¹ *Notice* at ¶¶ 8-10.

example is inapposite (even if one assumed the determination that AT&T is nondominant, on which reconsideration is pending, were correct) because AT&T divested its local exchange bottlenecks as a result of the MFJ. The Commission has clearly held that bottleneck control is *prima facie* evidence of market power, regardless of the amount of interLATA transmission capacity present in the market.¹² The independent LECs, on the other hand, possess bottleneck control, but lack the concentrated, regional dominance of an RBOC. Moreover, the Commission acknowledged in the case of the independent LECs that its rules would only provide "some, albeit not complete, protection against cost-shifting and anticompetitive conduct."¹³ Whatever the appropriateness of such incomplete protection for independent LECs, it is not sufficient in the new era of BOC interLATA entry.¹⁴ The Commission should require more assurance that the BOC does not possess market power in the interLATA market.

II. THE BOCs SHOULD BE CLASSIFIED AS NONDOMINANT CARRIERS ONLY ON TERMS THAT ENSURE THEY CANNOT EXPLOIT THEIR LOCAL MARKET POWER

The basic approach of the *Notice* is correct; the BOCs should be classified as dominant in instances where they are likely to possess market power and nondominant in instances where their market power is lacking. The conditions proposed in the *Notice*,

¹² *First Report and Order*, 85 F.C.C.2d at 21.

¹³ *Competitive Carrier*, Fifth Report and Order, 98 F.C.C.2d at 1198.

¹⁴ The Commission recognized this distinction when it emphasized that, notwithstanding its rules for the independent LECs, the BOCs would initially be considered dominant, at least until the Commission could examine the appropriate level of regulation. *Id.* at 1198 n.23.

however, are not sufficient to protect against the exercise of market power described in Section I.¹⁵

CompTel believes nondominant regulation would be appropriate if (1) the BOC's out-of-region services are physically and administratively separate, (2) the BOC does not jointly market local and out-of-region services, (3) the interLATA affiliate obtains Title II services from the BOC via generally applicable tariffs, (4) the interLATA affiliate does not receive discriminatory access to non-Title II services, and (5) the BOCs treat transactions with their interLATA affiliates as transactions with nonregulated affiliates for accounting purposes.

A. BOC Out-of-Region Services Should be Provided Through an Affiliate That Is Physically and Administratively Separate

The *Notice* proposes that a BOC provide out-of-region interLATA services through an affiliate that maintains separate books of account and does not jointly own transmission or switching facilities with the local telephone company. CompTel submits that in order to ensure the BOC's interLATA affiliate does not possess market power, it at least should in every way be a separate enterprise.

Thus, as the *Notice* proposes, the affiliate should use separate switching equipment and separate transmission facilities to provide its interLATA services. For these purposes, "switching" should be defined to include all databases and equipment used for call routing and validation purposes. Where the use of a BOC's equipment or database is

¹⁵ The FCC has ample authority to determine whether to regulate the BOCs as dominant or nondominant carriers. Section 271(b)(1) of the Act authorizes BOC entry into out-of-region services, but in no way limits the Commission's discretion to regulate common carriers, including the BOCs. Thus, the Commission retains its authority to regulate carriers to the degree necessary to ensure their rates and practices are just, reasonable, nondiscriminatory, and in the public interest. *See, e.g.*, 47 U.S.C. §§ 201(b), 202.

necessary, such as in accessing the LIDB databases, the affiliate should purchase such access in the same manner as unaffiliated IXC's.

In addition, a nondominant affiliate should meet the separation requirements specified in Section 272(b) of the 1996 Act. That is, in addition to maintaining separate books of account, it should have separate directors, officers and employees. It should operate independently of the BOC and enter into transactions on an arm's length basis. Further, the affiliate should obtain financing and credit as if it were an independent entity, and should not rely on the BOC to guarantee its debts in any fashion.

It is important to note that, unlike in-region interLATA services, the separate affiliate CompTel proposes is not mandatory. A BOC may provide out-of-region interLATA services even if it chooses not to use a separate affiliate. The consequence of such a choice, however, is that, because the BOC will possess market power, dominant carrier rules would apply.

B. The BOC Should Not Be Permitted to Jointly Market Out-of-Region Services and Local Exchange Services

This condition has two components. First, the BOC should not in any way market out-of-region services to in-region customers. For example, the BOC may not offer discounts to its calling card customers for using the BOC's interLATA affiliate. It also should not market the affiliate's services to subscribers of its local telephone service, such as those subscribers who maintain second homes outside the BOC's region or customers who are moving out of the BOC's region. Furthermore, it should not offer packages of in-region and out-of-region services to potential customers.

Second, like all other unaffiliated carriers serving greater than 5 percent of the nation's access lines, the BOCs may not market local services outside their regions in conjunction with interLATA services.¹⁶ Each RBOC serves greater than 5 percent of the nation's presubscribed lines,¹⁷ and therefore may not jointly market local and interLATA services, even if it provides such services through one or more affiliates with less than the 5 percent standard.¹⁸

C. The BOC Affiliate Must Obtain All Title II Services from the BOC's Generally Applicable Tariffs

As the *Notice* proposes, an essential protection against discrimination is that the affiliate obtain all Title II services it receives from the BOC from the BOC's generally applicable tariffs.¹⁹ This should include all access as well as calling card validation, and BNA information. Moreover, the Commission should prohibit the BOC from offering itself single customer or individually negotiated services.

¹⁶ New Section 271(e)(1) prohibits a "telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines" from jointly marketing local services obtained pursuant to Section 251(c)(4) with interLATA services at the present time. 47 U.S.C. § 271(e)(1). This prohibition will remain in force until the incumbent BOC is authorized to provide in-region interLATA services or until three years from the date of enactment, whichever occurs first.

¹⁷ FCC, *Statistics of Communications Common Carriers* (1993/94 ed.), Tables 1.1 (customer lines by reporting company) and 2.3 (total presubscribed lines).

¹⁸ For example, AT&T generally operates in each state using a separate corporate affiliate, such as AT&T Communications of Virginia, Inc., AT&T Communications of Maryland, Inc., and so on. Congress could not have intended to allow AT&T to avoid this provision simply because some or all of its affiliates serve less than 5 percent of the nation's access lines.

¹⁹ *Notice*, ¶ 13.

D. The BOC Affiliate Must Not Receive Preferential Access to Non-Title II Services

A BOC should not be permitted to discriminate in favor of its affiliate in the provision of non-Title II services, either. Thus, if the BOC offers billing and collection services to the affiliate, it should be required to offer the same services to all other carriers on equal terms and conditions.²⁰ In addition, any other services provided by the BOC, including access to information obtained by the BOC as a result of its provision of local exchange services, should be provided on a non-discriminatory basis.

E. Transactions Between the BOC and Its Affiliate Should Be Recorded as Transactions with a Non-Regulated Affiliate for Accounting Purposes

CompTel agrees with the *Notice* that the BOC should treat its out-of-region affiliate as a nonregulated affiliate for purposes of the joint cost rules and affiliate transaction rules.²¹ In addition, to ensure such accounting rules are observed, the BOC should be required to obtain an annual independent audit of its affiliate's cost accounting practices.

²⁰ The obligation to provide nondiscriminatory billing and collection for all IXC's, if the BOC offers disconnect for nonpayment to any IXC, is one of the MFJ equal access obligations Congress preserved under the Communications Act as amended by the 1996 Act. See 47 U.S.C. § 251(g); *United States v. AT&T*, 552 F. Supp at 234. In order to ensure that a BOC is not discriminating in favor of its affiliate, the Commission should require the BOC to file a copy of any billing and collection contracts it enters into with its affiliate. This filing would be more useful than the current requirement that the BOC file a list of billing and collection contracts, which the Commission is proposing to eliminate. See *Revision of Filing Requirements*, Notice of Proposed Rulemaking, CC Docket No. 96-23, FCC 96-64 (Feb. 27, 1996).

²¹ *Notice*, ¶ 13.

III. THE COMMISSION SHOULD CLARIFY OTHER ISSUES RELATING TO THE BOCs' PROVISION OF OUT-OF-REGION SERVICES

As stated above, CompTel believes the BOCs may be regulated as nondominant carriers for the provision of out-of-region interLATA services, provided there is no opportunity for the out-of-region affiliate to exercise the market power which the Commission has found exists in-region. For nearly all out-of-region interLATA situations, the above rules should adequately protect against a transfer of BOC market power. However, the Commission should give special attention to regions where the BOC has a cooperative venture with the incumbent LEC, to certain operator-assisted calls terminating in the BOCs' home regions, and to BOC out-of-region "incidental" services.

A. A BOC Affiliate Should Be Treated as Dominant in Territories Served by an Incumbent LEC with Whom the BOC has a Cooperative Arrangement

The danger that the BOC will exercise market power in interLATA services exists whenever the incumbent local exchange provider has an incentive to favor the BOC's services. This obviously is true when the incumbent LEC is the BOC itself, but it also is true when the incumbent LEC has a cooperative venture of any kind with the BOC. For example, Bell Atlantic and NYNEX have recently combined their cellular operations, and, according to news reports, are exploring other joint arrangements (possibly including a merger) as well.²² NYNEX, therefore, may have an incentive (direct or indirect) to favor a Bell Atlantic out-of-region interLATA affiliate providing service in NYNEX regions.

Accordingly, if the BOC has entered into a cooperative arrangement with the incumbent LEC, the Commission should regulate the BOC as dominant within that LEC's

²² Mills, "Bell Atlantic, NYNEX Hold Talks on Partial or Complete Merger," *Washington Post*, Feb. 8, 1996, at D-9.

territory. For these purposes, a cooperative arrangement should include direct equity investments of ten percent or less,²³ a partnership arrangement, a joint venture, a joint marketing arrangement, or any other arrangement where the two entities share in profits or revenues from an activity.

B. The Commission Should Clarify the Definition of In-Region Services

The Commission should clarify that certain operator-assisted services are in-region services when the terminating telephone number is located within the BOC's service territories. Specifically, collect calls, third-party billed calls, and calls charged to a BOC calling card should be declared in-region services when the terminating number is within the BOC region.

Section 271(j) of the 1996 Act states that 800 services, private line services "or their equivalents" are in-region services if (1) the call terminates in an in-region state, and (2) the called party determines the interLATA carrier for the call.²⁴ CompTel submits that the Commission should declare collect and third-party billed calls to numbers terminating in the BOC region and BOC calling card calls to in-region numbers to be "equivalent" services pursuant to Section 271(j). With these calls, as with 800 services and private line services, the party paying for the call selects the interLATA carrier and also is subject to the local market power of the BOC. Congress determined that, in such situations, the service

²³ If a BOC obtains more than a ten percent equity interest in an incumbent LEC, the LEC becomes an affiliate of the BOC. *See* 47 U.S.C. § 153(33). As a result, the LEC territory would become an in-region territory, and the BOC would be prohibited from providing interLATA services until the conditions of section 271(c) were met. 47 U.S.C. § 271(i).

²⁴ 47 U.S.C. § 271(j).

should be considered an in-region service. Accordingly, the Commission should prohibit the BOC out-of-region affiliate from completing collect calls, third-party billed calls, or BOC calling card calls to terminating numbers located within the BOC's region.

C. BOC Incidental Services Should Be Treated Like All Other Out-of-Region BOC Services

The *Notice* discusses the regulatory treatment of the BOCs' provision of out-of-region services pursuant to Section 271(b)(2) of the 1996 Act, but does not discuss "incidental" services authorized pursuant to Section 271(b)(3).²⁵ Incidental services, like other out-of-region interLATA services, raise similar concerns regarding discrimination and cross subsidization. Accordingly, the Commission should apply nondominant carrier regulation to BOC out-of-region incidental services on the same terms as it is applied to other out-of-region services.

CONCLUSION

For the foregoing reasons, the Commission should modify its proposal to strengthen the conditions which will serve as the predicate for classifying BOCs as nondominant carriers for out-of-region services. In all circumstances where the conditions are not met, the Commission should apply its dominant carrier rules to the BOCs. In addition, the Commission should apply dominant carrier rules to BOC out-of-region services


²⁵ "Incidental services" includes the interLATA transmission of audio and video programming to subscribers, two-way interactive services, commercial mobile services, database access, signalling, and network control signalling. 47 U.S.C. § 271(g). Incidental services are to be "narrowly construed." *Id.* § 271(h).

provided in LEC territories where the BOC has an equity interest, joint venture, or other cooperative arrangement with the dominant LEC and to BOC incidental services. Finally, the Commission should clarify that the 1996 Telecommunications Act prohibits the BOCs from completing most operator assisted calls that terminate in-region until the requirements of Section 271(c) of the Act are met.

Respectfully submitted,

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